HIGH COURT OF UTTARANCHAL AT NAINITAL

Second Appeal No. 408 of 2001 (MS)

Nagar Palika Parishad, Kashipur
& another ..... Appellants

Versus

Smt. Milkis Begum ..... Respondent

Sri Pradeep Lohani, Advocate for the petitioners
Sri Gopal K. Verma, Advocate the respondents.

Dated: 24.8.2004

Hon. Rajesh Tandon J.

Heard the learned counsel for the parties.

The present appeal has been filed against the judgment and decree dated 2.9.2000 passed by the III Addl. District Judge, Nainital in Civil Appeal no. 11 of 1997.

Briefly stated a suit was filed by the plaintiff respondent for permanent injunction restraining the respondents from interfering with his possession over a shop. The plaintiff alleged that he had constructed a shop after purchasing land and mutation was also recorded in his favour. The suit property has never been in possession or in the ownership of the Nagar Palika. On the apprehension that the defendant wants to evict the petitioner and as such he started demolition proceedings on 7.3.2003, the suit has been filed before the trial Court. The

plaintiff has produced documents regarding his title over the land in dispute including the sale deed. On behalf of the defendants a copy of the decree in Suit No. 130/1999 was filed where the plaintiff respondent was not a party and even the suit was filed subsequent to the sale deed, and as such no binding effect can be taken of the said suit.

The trial Court has framed three issues. While deciding to issue no.1 findings were recorded that there is a registered sale deed in favour of the plaintiff. On behalf of the plaintiff P.W.1 Khurshid Ahmed was examined, who has stated that after purchase of the land the plaintiff had moved application before the Nagar Palika before mutation and he proved the receipt of the fee paid to the Nagar Palika.

The entire facts on the record as well as the oral and documentary evidence has fully established that the plaintiff is owner and in possession of the property in question. Both the courts below have given concurrent findings. It is a case where mutation was done after purchase of the land. It has been proved that receipts were issued by the Nagr Palika after mutation proceedings are over.

Sri Pradeep Lohani on behalf of the Nagar Palika has stated that Nagar Palika is the owner of the property. He has stated that the property has already been acquired. Both the Courts below have come to the conclusion that there is no evidence to prove that the property was ever acquired. Both the courts below have recorded findings that the plaintiff respondent is the owner of the property by virtue of the sale deed executed in his favour. I find no infirmity in the order passed by the Courts below. In view of the aforesaid facts and

Circumstance I find no substantial question of law is involved in the second appeal.

In view of the aforesaid facts, the appeal has no merit and is hereby dismissed with costs.

(Rajesh Tandon J.)

24.8.2004

*Dhyani